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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/616,430	07/09/2003	Michael Tod Morman	13,857.1	9183
23556	7590	04/20/2005	EXAMINER	
KIMBERLY-CLARK WORLDWIDE, INC.			VO, HAI	
401 NORTH LAKE STREET			ART UNIT	
NEENAH, WI 54956			PAPER NUMBER	

1771

DATE MAILED: 04/20/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/616,430

Applicant(s)

MORMAN ET AL.

Examiner

Hai Vo

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 March 2005.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 24-31 and 35-42 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 24-31 and 35-42 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

1. The 112 claim rejections have been withdrawn in view of the present amendment (see page 6 of the 03/30/2005 amendment).
2. The double patenting rejections have been withdrawn in view of the terminal disclaimer filed on 03/30/2005.
3. The terminal disclaimer filed on 03/30/2005 disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of US 6,472,045 has been reviewed and is accepted. The terminal disclaimer has been recorded.
4. New grounds of rejections are made in view of Serbiak et al (US 5,846,232), Quantrille et al (US 5,804,286) and Antoon, Jr. et al (US 4,923,650). The finality of the rejection of the last Office Action is withdrawn.
5. The examiner would like to point out that the art rejections over Haffner (US 5,514,470) in view of McCormack (US 5,695,868) are withdrawn for the following reasons. The McCormack discloses the breathable, cloth-like film/non-woven composite retracts to product an undulating three-dimensional structure once the bonding is completed. This suggests that one of the layers in the composite material must be an elastic material for the formation of the undulating three-dimensional structure. The combined teachings of Haffner and McCormack does not arrive at a laminate as recited in the claims wherein a necked material and a film are both inelastic materials.

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

7. Claims 24, 28-31, 35, and 39-42 are rejected under 35 U.S.C. 102(b) as being anticipated by WO 96/16216. US 5,804,286 to Quantrille et al will be relied on as an equivalent form of WO 96/16216. Quantrille discloses a method for making an extensible composite nonwoven fabrics comprising: laminating a nonelastic extensible web to a nonelastic polyolefin film by an adhesive layer (column 3, lines 46-51, column 8, lines 30-31); stretching the composite fabric to extend and elongate the fabric in at least one direction (column 10, lines 1-10). Quantrille does not disclose the nonelastic extensible web is a necked material. However, since Quantrille uses the same materials to form the web as Applicants such as fibers of polyethylene and polypropylene (column 5, lines 58-60). Therefore, it is the examiner's position that the nonelastic web would be inherently a neckable material. The web and the film can be bonded by thermal means with an adhesive, which reads on Applicants' heating step (column 9, lines 37-38). The composite fabric elongation is between 70% to about 300%. Likewise, composite

fabric is stretched to about 1.4 to 6 times its original length within the claimed range. Quantrille does not specifically disclose the formation of striated rugosities in the inelastic film when the composite fabric is stretched. However, it is not seen that the rugosities could have not been formed in the inelastic film as the same processing steps have been performed and the same materials have been used. Accordingly, Quantrille anticipates the claimed subject matter.

8. Claims 24, 31, 35 and 42 are rejected under 35 U.S.C. 102(e) as being anticipated by Serbiak et al (US 5,846,232). Serbiak discloses a method for making an extensible outer cover layer comprising: laminating a necked nonelastic material to non-extensible film (column 4, lines 50-65, column 9, lines 5-7); stretching the outer cover layer in a first dimension to neck the outer cover layer in a cross dimension. The non-extensible film is a nonelastic polyethylene film (column 9, lines 8-10). Serbiak does not specifically disclose the formation of striated rugosities in the inelastic film when the outer cover layer is stretched. However, it is not seen that the rugosities could have not been formed in the inelastic film as the same processing steps have been performed and the same materials have been used. The same token is applied to the stretched length of the outer cover layer. Alternatively, Serbiak discloses an extensible outer cover layer comprising a necked nonelastic material and an extensible film (column 6, lines 60-65). Serbiak discloses the extensible zone has ability to retract between 5% to 50% (column 12, lines 5-10). This suggests that the outer cover layer is not an elastic material because it is not capable of returning to its original size or

shape after deformation. Likewise, the extensible film in the outer cover layer would not be an elastic material for successful retraction in such a range.

Accordingly, Serbiak anticipates the claimed subject matter.

Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 25-27 and 36-38 are rejected under 35 U.S.C. 103(a) as being unpatentable over WO 96/16216 as applied to claims 24 and 35 above, further in view of Antoon, Jr. et al (US 4,923,650). US 5,804,286 to Quantrille et al will be relied on as an equivalent form of WO 96/16216. Quantrille does not specifically disclose the nonelastic film partially stretched before lamination. Antoon, however, teaches a polyethylene film for use in diaper outer cover is prepared by stretching a casting of a composition of a polyolefin and inorganic particles to form the pores around the inorganic particles, thereby making the film breathable. The film contains from inorganic filler in an amount of 70% by weight (table I) or 24% by volume (CaCO₃ has a specific gravity of 2.70). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to partially stretch the polyethylene film prior to laminating motivated by the desire to render the film layer breathable.

Quantrille does not specifically disclose the laminate having a WVTR of at least about 100 g/m²/24 hours. However, it appears that the composite fabrics of Quantrille as modified by Antoon, Jr. are made of the same materials as the laminate of the present invention. The composite fabrics are formed from a necked nonelastic material and a nonelastic film layer. The modified nonelastic film contains the filler with the amount within the claimed range. Therefore, it is the examiner's position that the WVTR would be inherently present. It seems from the claim, if one meets the structure recited, the properties must be met or Applicant's claim is incomplete. This is in line with *In re Spada*, 15 USPQ 2d 1655 (1990) which holds that products of identical chemical composition can not have mutually exclusive properties.

11. Claims 25-27 and 36-38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Serbiak et al (US 5,846,232) as applied to claims 24 and 35 above, further in view of Antoon, Jr. et al (US 4,923,650). Serbiak discloses an extensible outer cover layer comprising a necked nonelastic material and an extensible film (column 6, lines 60-65). Serbiak discloses the extensible zone has ability to retract between 5% to 50% (column 12, lines 5-10). This suggests that the outer cover layer is not an elastic material because it is not capable of returning to its original size or shape after deformation. Likewise, the extensible film in the outer cover layer would not be an elastic material for successful retraction in such a range. Serbiak does not specifically disclose the extensible film partially stretched before lamination. Antoon, however, teaches a

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polyethylene film for use in diaper outer cover is prepared by stretching a casting of a composition of a polyolefin and inorganic particles to form the pores around the inorganic particles, thereby making the film breathable. The film contains from inorganic filler in an amount of 70% by weight (table I) or 24% by volume (CaCO_3 has a specific gravity of 2.70). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to partially stretch the polyethylene film prior to laminating motivated by the desire to render the film layer breathable.

Serbiak does not specifically disclose the laminate having a WVTR of at least about 100 g/m²/24 hours. However, it appears that the composite fabrics of Serbiak as modified by Antoon, Jr. are made of the same materials as the laminate of the present invention. The composite fabrics are formed from a necked nonelastic material and a nonelastic film layer. The modified nonelastic film contains the filler with the amount within the claimed range. Therefore, it is the examiner's position that the WVTR would be inherently present. It seems from the claim, if one meets the structure recited, the properties must be met or Applicant's claim is incomplete. This is in line with *In re Spada*, 15 USPQ 2d 1655 (1990) which holds that products of identical chemical composition can not have mutually exclusive properties.

Conclusion

12. Applicant's amendment on 11/10/2004 necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE**

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FINAL. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hai Vo whose telephone number is (571) 272-1485. The examiner can normally be reached on M,T,Th, F, 7:00-4:30 and on alternating Wednesdays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on (571) 272-1478. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public

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PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

HV

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